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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,211	08/29/2003	Seppo Pyhalammi	004770.00130	7632
22907 7590 09/14/2007 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER TSUI, WILSON W	
			ART UNIT 2178	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

mn

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/651,211	PYHALAMMI ET AL.	
	Examiner	Art Unit	
	Wilson Tsui	2178	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-53.
- Claim(s) withdrawn from consideration: _____.


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The amendments to the independent claims 1, 38 have changed the scope of the invention (since it raises new issues/scope for dependent claims 2-13, and 39-47 respectively), thus requiring new search and consideration. Additionally with respect to claim 14, the applicant argues that the term virtual folder is clear from the specification of paragraphs 37 and 39. However, the paragraphs do not explicitly define the term virtual. Additionally, the applicant argues that Figs 5-7, and 10, explain the term virtual folder, however, the examiner does not find any explicit definition as to what a virtual folder should be defined as, only that a virtual folder is implemented. Thus, using a dictionary as for the definition of virtual is still proper, since no explicit definition was mentioned in applicant's specification. The applicant secondly argues that the office action statement "such that the database itself is a virtual folder containing the images with metadata (since the functionality of a folder for storing data within a logical location is present in essence or effect" does not make any sense. However, based on the dictionary explanation of virtual, which includes "existing or resulting in essence or effect though not in actual fact", then in view of the definition of virtual, a database storing data (the two metadata schemes as explained in the previous office action) acts as a folder, since it effectively stores/"contains" the two schemes, and thus acts as a folder, even though a "folder" is not explicitly seen, since the folder is virtual. Thus, the applicant's argument is not persuasive. Additionally, the applicant argues that "if the database is supposed to correspond to a virtual folder, then how is the claim to be properly interpreted with the recitation that the database including at least one virtual folder?". Yet, this argument is not persuasive since the inclusion of the word virtual, does not emphasize a particular concrete limitation; and based upon the definition of a virtual folder (in view of dictionary term of virtual), a virtual folder can exist in essence or effect, though not actual fact, and thus, a database can act as not only a single virtual folder, but also as a multiplicity of virtual folders as well, based upon virtual storage of data based upon each scheme (whereas one or more schemes have been explained in the previous office action, and each scheme can be in effect a virtual data-scheme folder/organization/storage. Furthermore, the claim does not explicitly recite "the database including at least one virtual folder", and thus, the applicant is arguing limitations not present in the claim language. Thus, the applicant's argument is not persuasive. With respect to claims depending on claim 14, being allowable since claim 14 is allowable, is not persuasive, since claim 14, has been explained to be rejected. With respect to claims 10-12, and 44-46, for being allowable, since they dependent on allowable independent claims, is not persuasive, since the independent claims have been explained to be rejected. Additionally, with respect to claims 11 and 45, the applicant says that Wilcock and Stubler do not teach "wherein the wireless mobile device generates the prompt based upon data in another application being executed by the device". Yet, the applicant does not provide any explanation/evidence as to why Wilcock and Stubler do not teach the particular limitation, and thus, the argument is not persuasive. With respect to claims 12 and 46, the applicant argues that Wilcock and Stubler do not teach or suggest that the data comes from a calendar program. However, as taught by Stubler, data is used from a calendar program (paragraphs 0028-0031: whereas calendar data, such as date proximity is used). Thus, the applicant's argument is not persuasive. Additionally, the applicant further argues that the calendar program feature is not obvious based on the references either individually, or combined. Yet, In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wilcock et al teaches a system supporting image metadata to catalogue/organize photos (abstract of Wilcock et al). Stubler teaches supporting image metadata, including corresponding date data to catalogue/organize images as well. Thus, both Wilcock et al and Stubler et al are in the same problem solving area. of using metadata to catalogue/organize images, and therefore would have been obvious to combine as well. with regards to claims 15-23, 25-27, 29-32, 34-37, and 48-52 being allowable since they depend on an allowable independent claim, is not persuasive, since the independent claims have been shown to be rejected. With respect to claims 24 and 28, for being allowable since they depend on an allowable independent claim, is not persuasive since the independent claim, for which they depend on has been explained/shown to be rejected. With respect to claim 33, for being allowable since it depends on allowable independent claim 14, is not persuasive since claim 14 has been explained/shown to be rejected. With respect to claim 53, for being allowable since it depends on allowable independent claim 14, is not persuasive since claim 14 has been shown to be rejected.


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PRIMARY EXAMINER